

**REMARKS**

Claim 2 above, which the examiner has deemed acceptable in form, but not in novelty, is presented again in this new examination of application 10/042,975.

In the previous round of examination, applicant submitted dependent claims 3-8 regarding the targeting and paying of "realbuyer" prospects, that is, imminent buyers.

Applicant hereby cancels these claims and presents amended claims 9-14, based upon applicant's phone interview with the examiner in early September of 2007.

These claims find support throughout the specification of application 10/042,975. In particular, Book II of the specification is devoted to disclosing methods for targeting and

paving these realbuyers; see pages 65-66 which discuss the purposes of these methods and  
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The claimed invention does not use profiles and eliminates the need for profiles, which is a major benefit of the invention. While it is true that the invention can be used in conjunction with certain profile data, the *claimed* invention does not employ profiles, beyond using identity data.

In previous replies to office actions, applicant has discussed this issue in reference to Goldhaber, which teaches the channeling of money for attention and messages to users based upon *user profiles*.

While Gardenswartz teaches giving consumers value contracts in exchange for complying with “a particular behavior *pattern*” (emphasis added), this requires, and Gardenswartz describes, the collecting and maintaining of those patterns. Applicant’s claimed invention has no need for such pattern collection, and does not enable payment based on “established behavior patterns.”

Thus, applicant respectfully submits that this prior art should not be applied against the invention of claim 2.

#### **Combining Four Unrelated Prior Art References Finds No Basis in MPEP**

In the final objection of October 2, 2007, examiner has combined four prior art references: Goldhaber U.S. patent No. 5,855,008, Walker et al. U.S. patent No. 6,086,477, Vance U.S. patent No. 6,267,672, and Gardenswartz U.S. patent No. 6,298,477 to arrive at the conclusion that applicant’s claimed invention is obvious. As applicant has discussed in previous replies to office actions, these patents do not suggest any combination with one another.

Even if such a 4-piece combination would work in practice, which applicant does not concede, saying that the combination is obvious is simply a set of leaps examiner makes. Applicant does not think that it is a reasonable basis for an obviousness rejection.

In fact, as discussed in applicant’s reply of 6/29/04 in the examination of the parent, application 09/536,727, combining prior art Goldhaber with Walker and Vance to yield the

claimed invention would destroy the principle of operation of Goldhaber. The same applies to adding this prior art to Gardenswartz to yield the claimed invention.

The principle of operation of both Goldhaber and Gardenswartz is to utilize *profile data* to direct messages and payments.

As Goldhaber itself states, Goldhaber is “based on four principles: attention, interest, sponsorship and privacy (col. 4, lines 30-35). Goldhaber devotes much space to describing the foundational importance of its privacy principle (col. 6 lines 28-67, col. 7 lines 1-22, and many more lines), which is enabled via the use of *protected profiles* to channel ads to users.

As Gardenswartz enunciates in its title – “Communicating with a computer based on the offline purchase history of a particular consumer” – and in its independent claims, its core principle of operation is to target messages and/or value contracts by utilizing a “purchase history” (claim 1) or “purchase behavior classification” (claim 2), or a “behavioral pattern” (claim 3), all of which are synonyms for a type of profile – a processed record of behavior.

Unlike Goldhaber and Gardenswartz, the claimed invention enables anyone to be exposed to a message. A recipient’s qualifications are probabilistically inspected AFTER the recipient has been exposed to a commercial message. The claimed invention lets users agree to receive messages and accept payment with no profiles necessary.

So, if Goldhaber were to add the methods of the claimed invention, Goldhaber would have no need for one of its self-described “basic principles of operation,” that is, privacy implemented via channeling ads according to protected profiles. And, if Gardenswartz were to add the methods of the claimed invention, Gardenswartz would have no need of its core principle of operation, which is utilizing a purchase history or behavioral pattern to channel ads or offers.

**New Claim 9**

In new claim 9, applicant has added a clause at the end of cancelled claim 3, namely, "*said purchase not necessarily being from said advertiser.*"

Applicant added this clause to clarify the claim. The clarification came as a result of applicant's phone interview. In the interview, it appeared that examiner was interpreting claim 3 to mean that a recipient of a message + payment was required to buy a product from the advertiser. For example, Microsoft might provide a payment to a consumer who read an article about the Windows operating system and subsequently bought Windows. This was not what the claim intended, but applicant understands how it could be read that way.

Therefore, applicant has added the clause above to elaborate that the attention payment offer is made for buyers who get paid even if they buy from a competitor to the advertiser. For example, Microsoft might pay a consumer to read an article about the Windows operating system, provided that the consumer subsequently buys an *Apple* operating system.

Examiner indicated in the phone interview that a method and/or system for providing such message + payment offer to imminent buyers could be considered novel.

The rest of the amended claims 10-14 are dependent on claim 9 and, otherwise, have not been changed from their previous forms, except that claim 11 uses the term "where" instead of "specified location," which had been used in cancelled claim 5.

**Gardenswartz Does Not Teach the Method of Claim 9**

Gardenswartz, as discussed, describes a method and system that delivers ad messages and "value contracts" based on past user behavior, in particular purchase history.

For example, let us assume a user shops at a supermarket for a year and buys Land O'Lakes butter each time he buys butter. Assume Gardenswartz's system is operating at this store and collects this data. Now, assume that the next time the user goes to shop, Gardenswartz's system prints, say on the back of the user's receipt, a message regarding Safeway brand butter

along with a value contract, say a coupon, if the user buys Safeway butter. Thus Gardenswartz, and many other systems, use consumer histories to direct messages and offers.

The inventive method of claim 9 is very different because, as noted, it does not use data about the user's past. Past behavior is irrelevant.

The method of claim 9 is also very different because the user can get paid even if he does not buy from the message sender. In the example above, the user would be paid even if she did not buy Safeway butter.

That is, the user receives a message + payment from an advertiser but does not have to buy the advertiser's product to collect. Applicant sees nowhere in Gardenswartz or the other prior art references cited where this type of message targeting + paying is described or enabled.

Finally, it is important to note that Gardenswartz does not enable payment to consumers for their attention to messages. It may enable targeted messaging, and it may enable targeted "value contracts," but it does not enable payment for attention.

Respectfully submitted,



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